



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MAC - 174668

PRELIMINARY RECITALS

Pursuant to a petition filed on May 25, 2016, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Waukesha County Health and Human Services regarding Medical Assistance (MA), a hearing was held on June 21, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued an Order to Compel Payment to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On April 2, 2014, the agency issued a "Notice and Repayment Agreement for Medical Assistance/Badgercare/Badgercare Plus" to the Petitioner informing her that the agency intends to

recover an overissuance of Medical Assistance/Badgercare/Badgercare Plus benefits in the amount of \$1,331.64 for the period of December 1, 2013 – February 28, 2014. The notice also informed her of the right to appeal the overpayment determination by filing a request for a hearing within 45 days of the date of the notice with the Division of Hearings and Appeals.

3. On April 25, 2014, the Petitioner signed a “Notice and Repayment Agreement for Medical Assistance/Badgercare/Badgercare Plus Overpayment”, agreeing to pay \$20/month by the 25th day of the month. She further agreed that she understood she would be subject to collections actions if she defaulted on her monthly payments.
4. On May 1, 2014, the Petitioner paid \$20 to the agency. On June 3, 2014, the agency mailed a notice to the Petitioner that it had received her \$20 payment and that her outstanding balance on the debt was \$1,311.64. It advised the Petitioner that her next payment of \$20 was due by June 25, 2014.
5. Petitioner made no further payments toward the debt after May 1, 2014.
6. On May 2, 2014, July 2, 2014 and August 4, 2014, the agency issued dunning notices to the Petitioner.
7. On May 6, 2016, the agency issued an “Order to Compel Payment of Liability Under s. 49.497(1m)(a) Wis. Stats.” to the Petitioner commanding that the Petitioner pay \$1,311.64 to the Department of Children and Families no later than 30 days from the date of the notice.
8. On May 25, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat., §49.497(1m)(a) provides that if, after notice of incorrect payment is made, a recipient who is liable for an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment than the State of Wisconsin may bring an action to enforce the liability or may issue an order to compel payment of the liability. In this case the department has issued an order to compel payment of liability for an overpayment that the Petitioner agreed to repay. Petitioner can appeal, but according to the law the only issues that can be addressed are whether she paid off the overpayment, or whether she has entered into a repayment agreement and complied with it.

At the hearing, the Petitioner did not dispute that she only paid \$20 toward the overpayment and did not dispute that she had not complied with the repayment agreement. The Petitioner testified that she filed bankruptcy after incurring the overpayment debt and did not realize that a public assistance debt is not discharged by bankruptcy. The Petitioner also testified that she believed the repayment agreement was for a FS overpayment and that, if she had realized it was an overpayment of MA or Badgercare benefits, she would have appealed it because she disputes the merits of the overpayment.

With regard to the merits of the overpayment, the Petitioner’s appeal is untimely. The notice of overpayment clearly identifies that it was an overpayment of MA/Badgercare benefits. The notice informed the Petitioner of the right to a hearing if an appeal was filed within 45 days. The Petitioner’s appeal was not filed until two years later so I have no jurisdiction over the merits of the overpayment. A hearing examiner has no jurisdiction over matters that are not filed in a timely manner.

Also, I note that the repayment agreement signed by the Petitioner clearly indicates it is for an MA/Badgercare overpayment. The Petitioner signed the agreement, indicating she understood that if she did not comply with the terms of the agreement to pay \$20/month, she would be subject to additional collection actions. Public assistance debts are not dischargeable in bankruptcy and the filing of a

bankruptcy did not relieve the Petitioner of the requirement to repay the agency pursuant to the agreement she signed.

The Petitioner contends that she was covered by another insurance company and that she advised the agency that she had insurance. This decision does not prohibit the Petitioner from asking her insurance company to contact the Medicaid agency to see if they will reimburse the Medicaid agency for any claims that the insurance company might have covered.

The issues in a case such as this one are limited as described above. Thus I must conclude that the agency correctly issued an Order to Compel for the amount due.

CONCLUSIONS OF LAW

The agency properly issued an Order to Compel Payment to the Petitioner.

THEREFORE, it is **ORDERED**

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of August, 2016

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 15, 2016.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability